

**State of Wisconsin  
DEPARTMENT OF COMMERCE**

In the matter of:

The Claim for Reimbursement Pursuant  
To the Provisions of the PECFA Program  
By

Ralph Quinney.  
National Forensic League  
P.O. Box 38  
Ripon, WI. 54971-0038

Appellant,

Vs  
Secretary,  
Wisconsin Department of Commerce

Hearing Number 98-79  
PECFA CLAIM 54971-1314-04

Respondent

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**FINAL DECISION**

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STATE HEARING OFFICER:  
RONALD I. WEISBROD

DATED AND MAILED:  
July 22, 1999

MAILED TO:

Appellant Agent or Attorney

Lynn Bradley  
Fischer Environmental  
P.O. Box 552  
Ripon, WI 54971-0552

Department of Commerce

Kristiane Randal  
Assistant Legal Cotinsel  
P.O. Box 7970  
Madison, WI 53707-7970

cc: James M. Copeland

## **FINDINGS OF FACT**

In order to finance the cleanup of its petroleum-contaminated site, the National Forensic League, by its Executive Secretary, James M. Copeland, borrowed the funds from the M & I Central State Bank. The note evidencing this debt was dated March 1, 1996.

On January 17, 1995, the National Forensic League, by its Executive Secretary, James M. Copeland, completed an "Assignment of PECFA Reimbursement" form, assigning all "rights, title and interest in the proceeds" to Ralph Quinney, M & I Central State Bank.

On March 1, 1996, the National Forensic League, by its Executive Secretary, James M. Copeland, assigned its interest in its contract with the environmental consulting firm to clean up the site to the M & I Central State Bank, permitting the bank to oversee the completion of the remedial project in the event of a default on repayment of its loan.

On March 1, 1996, the National Forensic League, by its Executive Secretary, James M. Copeland, signed an assignment of PECFA proceeds to the M & I Central State Bank that provided a security interest or lien in and to the proceeds due from the reimbursement of costs incurred in the investigation and/or remediation project regarding petroleum contamination of its site.

On May 21, 1998, the Department of Commerce mailed a PECFA Award Summary to the National Forensic League providing a breakdown on PECFA costs being reimbursed for the cleanup of its site located at 104 W. Jackson St., Ripon, Wisconsin. The decision denied reimbursement in the amount of \$5,648.15.

The decision included an instruction that appeals to review the decision could be made by an owner or an operator, or an attorney representing the owner or operator, but not a consultant or claim preparer. An appeal or request for a hearing had to be received by the department within 30 days of the date of the decision. Late appeals would be denied.

The National Forensic League delegated the task of reviewing the department's award summary to its environmental consultant. Apparently, the consultant decided that an appeal was warranted. However, when the consultant attempted to contact the League's Executive Secretary to sign the appeal as owner, it discovered that he was out of the country and unavailable. The consultant then prepared an appeal letter to be signed by Mr. Ralph Quinney.

On June 19, 1998, Mr. Ralph Quinney, M & I Central State Bank, filed an appeal of the costs deducted from the PECFA claim submitted for cleanup of the National Forensic League site, in the amount of \$5648.15. Mr. Quinney's letter represented that the appeal was for the National Forensic League.

Mr. Ralph Quinney is not an officer, attorney or designated agent for the National Forensic League, the owner of the property in question. Neither he nor the M & I Central State Bank were occupants of the property in question.

The National Forensic League was not in default in its agreements to the M & I Central State Bank.

On May 12, 1999, the Department of Commerce moved to dismiss the appeal filed by Mr. Ralph Quinney on the basis that he was not an interested party in the matter.

### **APPLICABLE STATUTES AND CODE PROVISIONS**

Wisconsin Stat., § 101.143(4m) provides that filing an award assignment form with the department assigning the proceeds of an award to a person who loans money to the claimant for the purpose paying for the site cleanup costs, creates and perfects a lien in favor of the assignee in the proceeds of the award.

Wisconsin Admin. Code § Comm 47.53 provides that a "responsible party, agent, consultant or consulting firm may request a hearing with the department, as specified in s. 101.02(6)(e), Stats." Wisconsin Stat. § 101.02(6)(e) provides that "any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the department in the manner provided in this subchapter."

### **DISCUSSION**

The appellant, Ralph Quinney, contended that by virtue of the assignment of proceeds agreement with the National Forensic League, he was authorized to appeal the PECFA award decision as its agent. That contention cannot be sustained. Neither he nor the M & I Central State Bank owned or occupied the property in question. The National Forensic League was not in default on the loan from the bank, or any of the covenants contained in the assignment agreements nor was it suggested that any default was imminent. The PECFA award decision clearly instructed who was eligible to file an appeal. The consultant understood that it could not do so.

### **CONCLUSIONS OF LAW**

Ralph Quinney was not an owner or occupant of the National Forensic League PECFA remediation site and was not authorized to, file an appeal to the PECFA award, dated, May 21, 1998, within the meaning of Wis. Stat. § 101.02(6)(e) and Wis. Admin. Code § Comm. 47.53.

## **DECISION**

The Department of Commerce's Motion to Dismiss is granted. The appeal filed on June 19, 1998, requesting a hearing regarding the PECFA award on the National Forensic League remediation site, located at 104 W. Jackson St., Ripon, Wisconsin, is dismissed.

### **STATE HEARING OFFICER**

By

Ronald L. Weisbrod  
Administrative Law Judge

### **Notice of Rights**

Attached are the Findings of Fact, Conclusions of Law, and Order in the above matter. This is a **FINAL DECISION.**

Any party aggrieved by the decision may request a rehearing pursuant to Wis. Stat. § 227.49 within 20 days of the date of this decision by sending a petition to Dennis Kozich, Chief Counsel, Department of Commerce, P.O. Box 7970, Madison, WI 53707-7970. A petition for Judicial review must be filed no more than 30 days after the date of this decision or the date of a decision on a request for a rehearing, if any, pursuant to Wis. Stat. § 227.53. The petition for judicial review must be served on the Department of Commerce, Office of the Secretary, 123 W. Washington Avenue, 6th Floor, P.O. Box 7970, Madison, WI. 53707-7970